SPP Guiding Case No. 6: Case of Luo Jianhua, Luo Jingtian, Zhu Bingcan, and Luo Jinyou for Abuse of Power

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Keywords

Crime of abuse of power; major loss; seriously adverse social impact

Holding

According to the provisions of the Criminal Law, the crime of abuse of power refers to the act of a staff member of a state organ abusing his or her power, thereby "causing major losses to public property and to the interests of the State and the people." In practice, where the abuse of power "causes a seriously adverse social impact," it shall be determined in accordance with the law to have "caused major losses to public property and to the interests of the State and the people."

Basic Facts

The defendant Luo Jianhua, male, born in 1963, formerly an assistant administrator of the Dasha Street Enforcement Team of the Huangpu Branch of the Guangzhou Municipal Comprehensive Administrative Law Enforcement Bureau.

The defendant Luo Jingtian, male, born in 1967, formerly an assistant administrator of the Dasha Street Enforcement Team of the Huangpu Branch of the Guangzhou Municipal Comprehensive Administrative Law Enforcement Bureau.

The defendant Zhu Bingcan, male, born in 1964, formerly an assistant administrator of the Dasha Street Enforcement Team of the Huangpu Branch of the Guangzhou Municipal Comprehensive Administrative Law Enforcement Bureau.

The defendant Luo Jinyou, male, born in 1987, formerly an assistant administrator of the Dasha Street Enforcement Team of the Huangpu Branch of the Guangzhou Municipal Comprehensive Administrative Law Enforcement Bureau.

From August 2008 to December 2009, the defendants Luo Jianhua, Luo Jingtian, Zhu Bingcan, and Luo Jinyou were successively recruited by the Dasha Subdistrict Office of the Huangpu District People's Government of Guangzhou as assistant administrators of the Dasha Street Enforcement Team of the Huangpu Branch of the Guangzhou Municipal Comprehensive Administrative Law Enforcement Bureau (hereinafter referred to as the "Enforcement Team"). The work duties of the four defendants were urban management assistant administration at the subdistrict level, including dynamic patrols, participation in routine urban management work in the subdistrict and communities, dissuading and stopping and urging correction of conduct violating urban management regulations, and cooperating with comprehensive law enforcement departments in carrying out centralized and unified rectification campaigns. Their work tasks included adhering to a combination of patrolling and stationary guarding, and promptly persuading against unlicensed street vending in central urban areas. Luo Jianhua and Luo Jingtian served as the captain and deputy captain of the assistant administrators from August 2009 to May 2011, and thereafter Luo Jingtian served as captain and Luo Jianhua as deputy captain. The duties of the captain of the assistant administrators were to be responsible for assembling the assistant administrators, assigning work sections, and routine attendance management; the deputy captain's duties were to assist the captain in carrying out routine work and to perform the captain's duties when the captain was absent. When on duty, the four defendants wore uniformly issued camouflage uniforms, wore red armbands reading "Dasha Street Urban

Source: https://www.danyoungcpa.com/spp-guiding-case-6-china/

Management Supervisor," and carried a wooden stick. From August 2010 to September 2011, Luo Jianhua, Luo Jingtian, Zhu Bingcan, Luo Jinyou, and Luo Huihong (handled in a separate case) took advantage of their positions and, on multiple occasions, demanded small amounts of cash of 12 yuan, 10 yuan, and 5 yuan and cigarettes from multiple unlicensed vendors, or directly took cigarettes from a convenience store on that road section and had some unlicensed vendors settle the bill, and then abandoned their duties and allowed the unlicensed vendors who had given them benefits to illegally occupy roads for business in areas where unlicensed vending was strictly prohibited. As a result of the said defendants' conduct, illegal road occupation by unlicensed vendors in that area became very serious, with several hundred mobile vendors vending arbitrarily, seriously affecting the appearance and environmental sanitation of the city and causing great inconvenience to the business, life, and travel of surrounding shops and residents. Due to unfair law enforcement — allowing vendors who had given money to occupy roads for business while driving away vendors who had not given benefits or notifying the urban management department to penalize them — the conduct aroused strong public dissatisfaction, and urban management law enforcement personnel encountered violent resistance to the law on multiple occasions in the lawful performance of their duties, with several law enforcement personnel injured and hospitalized. The conduct of the four defendants seriously endangered and affected the social order, economic order, urban management, and public security administration of the area, causing a seriously adverse social impact.

Procuratorate Performance of Duties

On October 1, 2011, Luo Jianhua, Luo Jingtian, Zhu Bingcan, and Luo Jinyou were placed in criminal detention by the Huangpu Branch of the Guangzhou Public Security Bureau on suspicion of the crime of extortion, and were arrested on November 7. On November 10, the Huangpu Branch of the Guangzhou Public Security Bureau transferred the case to the Huangpu District People's Procuratorate of Guangzhou. On November 10, 2011, Luo Jianhua, Luo Jingtian, Zhu Bingcan, and Luo Jinyou were placed on file for investigation by the Huangpu District People's Procuratorate of Guangzhou on suspicion of the crime of abuse of power, and the investigation was concluded and the case transferred for review and prosecution on December 9. On December 28, 2011, the Huangpu District People's Procuratorate of Guangzhou initiated a public prosecution against the defendants Luo Jianhua, Luo Jingtian, Zhu Bingcan, and Luo Jinyou for the crime of abuse of power before the Huangpu District People's Court. On April 18, 2012, the Huangpu District People's Court rendered a first-instance judgment, holding that the defendants Luo Jianhua, Luo Jingtian, Zhu Bingcan, and Luo Jinyou, as persons performing public duties in a state organ although not included in the staffing of state organ personnel, when exercising authority on behalf of the State, had long improperly performed their authority, extorting money from some unlicensed vendors in the jurisdiction on a large scale, causing illegal road occupation by unlicensed vendors to become very serious, causing violent resistance to the law to occur continuously, and causing a quite adverse social impact, and that their acts violated Paragraph 1 of Article 397 of the Criminal Law of the People's Republic of China and constituted the crime of abuse of power. The defendants Luo Jianhua and Luo Jingtian, as former and current captain and deputy captain of the urban management assistant administrators, not only participated in extorting money from unlicensed vendors and allowing unlicensed vendors to illegally occupy roads for business, but also accepted cigarettes extorted by their subordinates and allowed their subordinates to act recklessly, and played a relatively larger role in the joint crime, so they could be given a heavier punishment as appropriate. In view of the fact that the four defendants were able to confess their crimes after being brought to justice, they could be given a lighter punishment as appropriate. In accordance with Paragraph 1 of Article 397 and Article 61 of the Criminal Law of the People's Republic of China and the Interpretation of the Standing Committee of the National People's Congress on the Application of the Subject of the Crime of Dereliction of Duty in Chapter IX of the Criminal Law of the People's Republic of China, the defendant Luo Jianhua was convicted of the crime of abuse of power and sentenced to one year and six months of fixed-term imprisonment; the defendant Luo Jingtian was convicted of the crime of abuse of power and sentenced to one year and five months of fixed-term imprisonment; the defendant Zhu Bingcan was convicted of the crime

Source: https://www.danyoungcpa.com/spp-guiding-case-6-china/

of abuse of power and sentenced to one year and two months of fixed-term imprisonment; and the defendant Luo Jinyou was convicted of the crime of abuse of power and sentenced to one year and two months of fixed-term imprisonment. After the first-instance judgment, none of the four defendants appealed within the statutory period, and the procuratorial organ did not lodge a protest, so the first-instance judgment became legally effective.

Relevant Legal Provisions

Paragraph 1 of Article 397 of the Criminal Law of the People's Republic of China; the Interpretation of the Standing Committee of the National People's Congress on the Application of the Subject of the Crime of Dereliction of Duty in Chapter IX of the Criminal Law of the People's Republic of China.

Disclaimer: This translation is provided for general reference only. It is not an official translation and carries no legal authority. In the event of any discrepancy, the original Chinese text promulgated by the relevant authority shall prevail. Professional advice should be sought before relying on this material for any specific matter.